IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2785 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PARESH DEVENDRABHAI JANI

Versus

P C PANDE

Appearance:

MR MIG MANSURI for Petitioner

MR SJ DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 27/06/2000

ORAL JUDGEMENT

By means of filing this petition, the petitioner has challenged the order of detention dated 12-1-2000 passed by the Commissioner of Police, Ahmedabad City.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner and also perused the material on record. Petitioner has challenged his detention on various grounds. But at the end of arguments, learned advocate for the petitioner has relied upon only one ground and argued that in this case, authority has filed the affidavit-in-reply and in para 16 of the said affidavit at page 17, authority has categorically stated that "I say that the order of detention was passed on 12-1-2000 and the said fact was forthwith reported to the State Govt. on the same day together with the grounds on which basis the order is passed and such other particulars, which, in my opinion, have a bearing on the aspect of the matter". Learned advocate for the petitioner has argued that though the authority has relied upon such other particulars, then also, they have not supplied the said particulars to the detenu. To support the above arguments, he has relied upon a case of Dhirubhai Chhanabhai Rathod Vs. Commissioner of Police, Surat and Ors. reported in 1990(2) G.L.H. 48. In para 2 of the said judgment, it was held by a Division Bench of this Court as under:

> "Thus there is infraction of safeguards provided under the provisions of Art.22(5) of the Constitution of India and the petitioner detenu has been deprived of knowing the grounds and making effective representation against the order of detention."

4. In view of the facts and circumstances of the case and also in view of the judgment relied upon by the learned advocate for petitioner, the order of detention

is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

5. The petition is allowed. The impugned order of detention dated 12-1-2000 passed by the Commissioner of Police, Ahmedabad City against the detenu is hereby quashed. The detenu-Paresh Devendrabhai Jani is set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA,J.)

RADHAN/